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March 28, 2000

Mr. Emile Julian
Assistant for Rulemakings and Adjudications
U.S. Nuclear Regulatory Commission
Office of the Secretary
Washington, D.C. 20555-0001

Re: In the matter of: Hydro Resources Inc., P.O. Box 15910, Rio Rancho, New Mexico 87174, Docket No. 40-8968-ML, ASLBP No. 95-706-01-ML

Dear Mr. Julian:

First, I write to thank you for your considerate manner last week in accepting page 139 of Exhibit B of the affidavit of Dr. John Fogarty, submitted March 15, 2000 with our Motion to Reopen and Supplement the Record. The mailed copy of page 139 of Exhibit B should have reached you by this date. Please let me know if that copy has not arrived.

Second, I write to address an issue that you raised to our office manager, Ms. Allison Dellinger, on March 23, 2000. I understand that Ms. Dellinger left a voice message for you to check if your copies of Exhibit B were missing page 139. When you returned Ms. Dellinger's call, you relayed a concern to Ms. Dellinger; specifically, whether you could file one or more of the exhibits because "they are copyrighted." Ms. Dellinger then told me that you stated that it is a business practice of the Nuclear Regulatory Commission ("NRC") to not file copyrighted documents. If there is a written policy document or explanation of such business practice, I would appreciate it if you would send it to me or direct me to where I might find a copy.

Regardless of NRC policy, I write to allay whatever concerns you might have about the filing of the copyrighted exhibits in this proceeding. Under the doctrine of "fair use," copyright documents may be used without consent of the author in the course of an adjudicatory proceedings. In support of this proposition, the United States Court of Appeals for the Ninth Circuit has cited Nimmer on Copyright § 13.05[D] at 13-91 (1991), which states, "works are customarily reproduced in various types of judicial proceedings ... and it seems inconceivable that any court would hold such reproduction to constitute infringement either by the government or by the individual parties responsible for offering the work in evidence." Religious Technology Center v. Wollersheim, 971 F.2d 364, 367 (9th Cir. 1992). Further, the Supreme Court has stated that "use that has no demonstrable effect upon the market for, or the value of, the copyrighted work need not be prohibited in order to protect the author's incentive to create." Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 450 (1984). And finally, even an attorney's use of a

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copyrighted photograph in a nationally televised criminal trial was deemed to be legal and proper "fair use." See Kulik Photography v. Johnnie L. Cochran, Jr. and F. Lee Bailey, 975 F. Supp. 812, 814 (E.D.Va. 1997).

I hope that this information puts to rest concerns you might have about the filing of exhibits to Dr. Fogarty's affidavit. I would also appreciate it if you would, in the future, direct such concerns to any available counsel at the Law Center rather than to Staff. If any of the exhibits have not been filed, I would appreciate it if you would let me know at your earliest convenience.

Thank you again for professional and kind handling last week of the oversight regarding Exhibit B's page 139. It is much appreciated by me, Ms. Dellinger, and the rest of the Staff of the Law Center.

Very truly yours,



Geoffrey H. Fettus
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cc: Service list